IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.291 OF 2005

...

SPS Engineering Ltd. ...Petitioners

v/s.

Indian Oil Tanking Ltd.

and Anr. ...Respondents

...

Mr.Swapnil Bangur i/b G.S.Manasawala for the Petitioners.

Mr.D.D.Madon i/b Doijode & Associates

...

CORAM: D.K.DESHMUKH, J.

DATED: 6TH DECEMBER,2005

P.C.:

1. The Petitioner by this Petition challenges the award made by the sole arbitrator dated 4th March,2005. Before me the learned Counsel appearing for the Petitioner states that the Petitioner challenges only that part of the award made by the learned arbitrator whereby the counter claim made by the Respondent has been awarded.

2. The Respondent had awarded a contract for carrying out certain works to the Petitioner. The Petitioner did not complete the work within the time. Therefore, the contract was terminated and contract for completing the unfinished work was given to another contractor. By the counter claim the Respondent was claiming, as damages, the amount that was required to be paid by the Respondent to the new contractor in excess of what the Respondent would have been liable to pay to the Petitioner, had the Petitioner completed the work. While deciding the claim made by the Petitioner, the arbitrator has recorded a clear finding that the Petitioner has been

guilty of committing breach of the terms of the contract and therefore, the termination of the contract is legal.

3. Perusal of the petition, however, shows that the grounds in the petition proceed on the basis that the arbitrator has recorded a finding that the termination of the contract has been held as illegal. It was submitted before me by the learned counsel for the Petitioner that the amount of loss suffered by the Respondent has been arrived at by the learned arbitrator without there being any evidence on record. It was also submitted that part of the work that was allotted to the new contractor was not covered by the contract between the Petitioner and the Respondent and therefore a basic mistake has been committed by the learned arbitrator. It was also contended that there is a calculation mistake committed by the learned arbitrator.

4. From the perusal of the award it shows that the Respondent in support of his case had filed a detailed statements regarding the amount paid to the claimant/supplier. The Respondent had also produced evidence to show what were the amount paid by the

Respondent to the new contractor. These statements which were filed by the Respondent were not disputed by the Petitioner and therefore, this being the admitted position the arbitrator has accepted the figure given by the Respondent and made the award.

5. After having heard the learned Counsel for the Petitioner and the Respondent and after having gone through the record, I find that the award impugned in the petition is well considered award and it cannot be challenged on any of the grounds mentioned in Section 34 of the Arbitration & Conciliation Act. As I do not find any reason to interfere with the award, the petition fails and is dismissed. The Petitioner is directed to pay costs of this petition to the Respondent, as incurred by the Respondent.

...